

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CRIMINAL DIVISION


IN RE: THE 2017 : Criminal Division
ALLEGHENY COUNTY :
INVESTIGATING GRAND JURY : CP-02-MD-5289-2017
CASE C :

REPORT A

TO THE HONORABLE JILL E. RANGOS, SUPERVISING JUDGE:

We, the members of the 2017 Allegheny County Investigating Grand Jury, based upon facts received in the course of an investigation authorized by the Investigating Grand Jury Act, recommend administrative and policy action in the public interest. So finding, with not fewer than twelve concurring, we do hereby adopt this first Report for submission to the Supervising Judge.

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Foreperson, The 2017
Allegheny County
Investigating Grand Jury

Dated: 10/4/18, 2018

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SUMMARY

The Report contained herein represents the findings of the 2017 Allegheny County Investigating Grand Jury regarding the critical incident occurring at 129 Finley Street in the City of Pittsburgh on January 22, 2017, which resulted in the death of Christopher Mark Thompkins. This matter was referred to this Grand Jury due to a lack of cooperation with the Detectives from the Allegheny County District Attorney's Office assigned to oversee the City of Pittsburgh Bureau of Police's critical incident investigation. Specifically, the Detectives were denied full access to the witnesses and evidence available at the time of the incident. While this initially raised concerns about the integrity of the investigation as well as the Officers' actions in this matter, our investigation revealed that the perceived lack of cooperation was actually orchestrated by others and was not evidence that the Officers were hiding anything about their actions. Rather, the 2017 Allegheny County Investigating Grand Jury was able to review sufficient evidence surrounding the January 22, 2017 critical incident that occurred at 129 Finley Street in the City of Pittsburgh and determine that the use of deadly force by Law Enforcement Officers that night was in accordance with their training.

In making our findings, we have been guided by the principles of law regarding an officer's use of force in the course of his duties. We recognize that police officers, by the nature of their duties, are sometimes faced with difficult and dangerous situations that require split-second decision making. Such decisions can only be made based on the information available to the officer at the moment he or she acts. While, as in the instant case, a decision made before all of the facts can be known by the officer may lead to tragic results, failing to act quickly when faced with an escalating and dangerous situation might prove to be deadly to the officers involved or to civilians in the area.

Our determination was neither made lightly, nor before an exhaustive review of all available evidence. Notably, it was the obtrusive conduct and failure to adhere to long standing policies by others that cast the greatest shadow of doubt onto this incident and caused it to be presented to this Grand Jury. But for the immense resources and powers of the Grand Jury to uncover evidence and compel testimony, it is conceivable that criminal charges against the shooting Officers could have been filed. However, this Grand Jury, through a long and thorough review of the evidence and applicable legal standards, has determined that both Officers acted in accordance with their training in their use of deadly force at Finley Street on January 22, 2017.

At the outset of this investigation, there was a cloud of suspicion cast over the officer-involved shooting that occurred at 129 Finley Street, not only because a person who needed assistance from law enforcement was killed by those who had been summoned to provide it, but also because the law enforcement officers who could answer questions about what had occurred were prevented from providing information to the Detectives tasked with overseeing the investigation into the critical incident. Ultimately, that interference has constrained us from a finding of legal justification. Nonetheless, in light of the available evidence, we cannot recommend criminal charges because we find that the officers acted in accordance with their training in the use of deadly force.

FACTS

In the early morning hours of January 22, 2017, Juan Jeter-Clark was captured by a home security camera mounted on the porch of 129 Finley Street forcing his way into the residence. Jeter-Clark was highly intoxicated and acting as though he had some right to be in this house, even though there was no established connection between him and the residence or its occupants.

At that time, Christopher Mark Thompkins was asleep in an upstairs bedroom with his wife, Brenda Richmond. Downstairs, in a bedroom just inside the front door and to the left of the stairway, was Thompkins' elderly, disabled mother, Carrie Montague. Just before 4:00 am, Richmond was startled awake and found Jeter-Clark standing over her bed. She yelled for Thompkins to wake up and then watched as Jeter-Clark calmly walked out of their bedroom. Once the immediate threat was gone, Richmond proceeded to retrieve her .38 caliber revolver. Thompkins pleaded with her to give him the firearm so that he could protect his mother. As Richmond relinquished the firearm, Thompkins implored her to call 911 and proceeded out of their bedroom. Unbeknownst to Thompkins or Richmond, the police had already been summoned to the residence by Montague. Guardian Protection Services was also alerted to the intrusion and had an open line of communication into the house via a wall-mounted security panel.

When 911 dispatch received the call from Montague, various patrol units from the City of Pittsburgh Police responded to 129 Finley Street. Approximately two minutes after Montague called 911, two patrol units arrived at her home simultaneously. Officers Brendan Flicker and Harrison Maddox took positions at the front of the house upon arrival. Officers Gino Macioce and Matthew Haule proceeded to the rear. The information that had been provided to those Officers while they were en route was minimal. It was clear to them that they were responding to a home invasion with at least one male perpetrator. They were also told by dispatching personnel that there was a disabled, elderly female who was located on the first floor of the home. Given that this was the only information available to the Officers, they could not have known if any other residents or intruders were involved.

Upon arriving at the front door, Officers Flicker and Maddox took positions on either side of the doorframe. The main door to the house was wide open, but the heavy steel screen door was stuck in a closed position, prohibiting entry by the Officers. However, the Officers were able to see through the screen door into the interior of the home. They also would have had aural contact with Montague, whose bedroom was just to the left of the front door. At that time, Montague was on the phone and providing information to a 911 operator.

The harrowing details of what transpired next were captured by the audio and video recording of Officer Flicker's body-worn camera, the audio recording of the 911 call that was placed by Montague, and the audio recording from the home security system. The body camera worn by Officer Flicker captured nearly everything that occurred right before, during and after the confrontation between the police and Thompkins.¹ Unfortunately, Officer Flicker's chest-mounted camera was not pointed toward the screen door, so a firsthand view of what the Officers could observe through that door, including Thompkins' actions, was not available. Nonetheless, a synchronized review of the two recordings provided a second-by-second account of the critical incident as it unfolded between 3:54 am, when Montague first connected with 911 dispatch, and 3:58 am, when Thompkins was fatally shot, as well as the aftermath of that incident.

At approximately 3:53 am on January 22, 2017, the Guardian Protection Services home security system at 129 Finley Street was triggered. Shortly thereafter, an intoxicated Juan Jeter-Clark can be heard representing himself to be "Chris" while communicating with a

¹ Officer Flicker's body camera footage begins with video-recording only approximately ten seconds before he fires two shots at Thompkins. At the 30-second mark of the video, audio recording begins. The Grand Jury learned that the technology employed by the City of Pittsburgh Police Department requires an officer to manually activate his or her own body-worn camera. Once activated, the camera will begin recording audio and video. However, the cameras are constantly video recording on a rolling basis and will preserve video-only recording going back 30 seconds before an officer activates the camera. Thus, in this instance, Officer Flicker activated his camera after the shooting had finished, but the Grand Jury was able to review everything that was captured by the camera in the 30 seconds prior.

representative of Guardian in an attempt to shut off the alarm that is blaring throughout the house. At 3:54:43 am, Montague, who was nearest to the front door and first to know of the intruder, connected with an operator from 911 and immediately informed the operator that someone had just broken into her home. The alarm continued to sound in the background, and the family's dog was barking loudly. Over the course of the next two minutes, Thompkins can be heard yelling for his mother and shouting commands at Jeter-Clark to get out. Montague then told the 911 operator that a man had broken in, and described herself as crippled, and alone. She was clearly afraid and unable to help herself. Further confusing the matter, the 911 operator heard a man inside the house yelling "Mom," but Montague told the operator that the voice belonged to the intruder and not her son. The scene was chaotic and confusing.

Just over two minutes after the phone call to 911 was initiated, the police arrived at the front door. At 3:56:52 am, Officers Flicker and Maddox announced their presence and pounded on the locked screen door. Montague, located approximately eight feet from the front door and within earshot of those Officers, begged them to enter. Unfortunately, because the screen door was jammed after being forced open by Jeter-Clark, the Officers were stuck outside. Inside the home, male voices continued shouting. Thompkins can be heard yelling at the intruder to get out and imploring Richmond to call 911 despite the fact that police were already on scene. In the chaos, Thompkins appeared to have had no idea that the police were already at his house and were positioned less than 20 feet away from where he stood, despite the Officers yelling directives at Thompkins. At 3:57:40 am, Thompkins once again asked his wife to call the police. Seconds later, Thompkins fired his weapon for the first time at Jeter-Clark.

At 3:57:54 am, Thompkins was positioned at the top of a set of steps directly ahead of the front doorway and was armed with Richmond's .38 caliber revolver, which was loaded with five

rounds of ammunition. Jeter-Clark was at the bottom of the steps in a room just a few feet to the right of that doorway. Officers Flicker and Maddox had taken their positions on the front porch. Thompkins can be heard shouting commands at Jeter-Clark right before he fired the gun in the intruder's direction. The bullet struck the baseboard near the front door. The Officers were directly outside that door. Thompkins continued to shout at the intruder in his home, warning Jeter-Clark to leave. At the same time, Montague told the 911 operator that the intruder had just shot her son, although this information was inaccurate. It is unknown whether Officer Flicker heard that statement by Montague or whether something else prompted him to act, but at 3:58:09 am, Officer Flicker left his position of cover next to the front door and confronted the armed individual who was still standing at the top of the stairs.² Officer Flicker twice ordered Thompkins to show his hands in an attempt to control the quickly escalating situation. Based upon the available evidence, it appears as though Thompkins neither saw Officer Flicker nor heard his commands. As a result, Thompkins did not follow the Officer's orders and fired a second shot in Jeter-Clark's direction. The second bullet also struck near the doorway close to where Jeter-Clark and both Officers were located.

At 3:58:10 am, Officer Flicker responded to Thompkins' second shot by firing two shots from his .45 caliber handgun at Thompkins. Officer Maddox then left his position of cover to join Officer Flicker on the outside of the screen door. At 3:58:14, Officer Maddox fired his 9mm caliber firearm nine times in Thompkins' direction. As reported by Dr. Tanner Bartholow and Dr. Karl Williams of the Allegheny County Office of the Medical Examiner, Thompkins died as a result of gunshot wounds to his trunk and extremities. He was struck at least seven times.

² The Grand Jury is aware that Officers Flicker and Maddox each lawfully invoked their 5th Amendment right against self-incrimination during the criminal investigation of this incident. Recognizing that right, we did not subpoena these Officers to testify.

When the shooting stopped, Jeter-Clark communicated with the Officers, telling them that Thompkins “doesn’t know any better.” Officer Flicker then questioned Jeter-Clark through the still jammed screen door about whether he was the lawful homeowner and ordered him to stay put. At 3:58:37 am, Officer Flicker called out over his police radio that, “both tangos are down inside the house,”³ still clearly unaware of the identities of the persons inside. He also put out a request for breaching equipment to break through the front door, while he and his partner kept their firearms trained on Thompkins. Within two minutes, backup police officers arrived on scene to assist in making entry to the home. As Officer Greg Livesey reached the porch and before entry was made, Officer Flicker gave him a brief account of what he witnessed inside, telling Livesey, “[t]his guy on the staircase, he was shooting at the guy laying down there, and he (Thompkins) hasn’t been moving. He’s still got that gun by his body.” As Officer Livesey’s partner, Officer Timothy Matson, arrived on the porch, Officer Flicker continued to provide an account of what happened, informing Officer Matson that, “the tango on the staircase is the one we shot with the gun. I don’t know where it is.” After multiple attempts, the Officers were able to breach the front door and make entry into the home.

Over the course of the next several minutes, all police on scene assisted in clearing the structure and securing the occupants inside. Jeter-Clark was detained in the living room where he had been when the shooting occurred. Montague was located in her bedroom. Richmond was found on a rear, exterior roof to which she had fled through a bedroom window during the shooting. She was then escorted back inside and guarded by Officer Matson until the house was clear and deemed to be safe. She also directed Officer Matson to a second revolver that was kept in the same bedroom. Once the house was secured and it could be determined who had a lawful right to be in the home, Jeter-Clark was placed under arrest.

³ Tango is understood by police officers to mean criminal actor or suspect.

Even after the house was cleared, approximately three minutes after the police first entered, Officer Flicker was still concerned about any potential danger presented by Thompkins, again informing officers that Thompkins may need to be handcuffed as he was shooting a gun that was still near his body. When Officer Flicker eventually got near Thompkins' body and was told that Thompkins was, in fact, an innocent civilian, Officer Flicker responded: "He (Thompkins) was fucking shooting the guy (Jeter-Clark), dude. We watched him. He was executing the guy." A short time later, Officer Flicker again explained what happened to a supervisor. Officer Flicker started by suggesting to his supervisor that someone needed to tell Richmond that her husband had been killed. He then described the incident: "We were at the front door breaching and we saw him firing a gun into that guy. He was on the staircase, he was shooting this way, and me and Maddox returned fire from the front porch, up to him. And then, he started fleeing up the stairs."

Throughout these brief encounters with other officers on scene, Officer Flicker's explanation of events remained consistent. Furthermore, Officer Flicker's statements are corroborated by the audio and video recordings, as well as by the evidence that was obtained during the forensic investigation of the scene. It is also noteworthy that the audio and video recording of the incident that was captured on Officer Flicker's body camera is only available because that camera was manually turned on by Officer Flicker during the encounter.

THE CRITICAL INCIDENT INVESTIGATION AND NEED FOR THE GRAND JURY

In 2002, the Allegheny County District Attorney and the City of Pittsburgh Police Department entered an agreement under which Detectives from the District Attorney's Office would be assigned to oversee the City of Pittsburgh Police investigation of any critical incident involving a City officer. The purpose of this oversight by District Attorney Detectives was to

ensure the integrity of the investigation conducted by the City Police Department into one of its own officers. The oversight function required that the District Attorney Detectives assigned to a particular critical incident be given full access to the scene, be permitted to sit in on any interview of witnesses or officers involved in the incident, and have access to all evidence collected by the City Police in their investigation. This agreement, which was in effect throughout 2017, was meant to provide an independent review of the investigation by an outside agency, in recognition that a police agency investigating its own officers involved in critical incidents gives the appearance of bias and potentially other improprieties.

Following the critical incident at 129 Finley Street, per the protocol that was in place at the time, various entities were called to respond to the scene. Specifically, Command Staff from the City of Pittsburgh Police Department, Detectives from that Department's Homicide and Mobile Crime Unit divisions, and Detectives from the Office of the District Attorney for Allegheny County were all notified and responded. Once at the scene of the critical incident, members of the City's police force were responsible for conducting the investigation, to include identifying the parties involved and witnesses to the incident, gathering information from those individuals about what had occurred, as well as preserving, collecting, and documenting the physical evidence. Detectives J.R. Smith and Scott Evans, from the District Attorney's Office, were responsible for overseeing that investigation to ensure that a full and fair investigation was conducted and then to gather the evidence obtained by the Pittsburgh Police for subsequent review by the District Attorney.

When they arrived at 129 Finley Street, the District Attorney's Detectives were escorted around the crime scene by various members of the Pittsburgh Police Department. They were given full access to all relevant areas of inquiry at the scene. City Police personnel provided the

Detectives with the information that had been gathered to that point in time. To the satisfaction of the Detectives Smith and Evans, a comprehensive investigation by the Pittsburgh Police Department was being conducted at the scene. The only issue of note reported by the District Attorney Detectives was that Officers Flicker, Maddox, Macioce, and Haule had all left the crime scene and were reportedly heading to City Police headquarters. Thus, those Officers who were actually present when the shooting took place were unavailable for viewing or questioning at the scene. Though Detectives Smith and Evans found this circumstance unusual, at the time they did not deem it problematic to their oversight function, as they presumed they would have an opportunity to encounter these Officers at headquarters once they were finished going through the crime scene.

At the scene of the incident, there were various pieces of physical evidence that were of importance to Detectives Smith and Evans, two law enforcement officers who have extensive education, training and experience in the investigation of homicides. First and foremost, they observed fresh bullet strikes just inside the threshold of the front doorway that corresponded with accounts of Thompkins firing down the stairwell in that direction. Mobile Crime Unit reports would later identify two .38 caliber bullet fragments near that doorway. Second, the Detectives were able to note the location of Thompkins' body on the stairwell landing and his proximity to the .38 caliber revolver he had been firing, which was found on that same landing. That revolver was later examined and found to have three live rounds of ammunition and two spent shell casings in its cylinder. The Detectives were also able to see various .45 and 9mm caliber shell casings scattered around the front, exterior of the house, which were the caliber of the weapons utilized by Officers Flicker and Maddox, respectively. Next, Detectives Smith and Evans were able to observe the rooms occupied by, and the reported positions of, Juan Jeter-Clark and Carrie

Montague during the incident, so that they could attempt to understand what Officers Flicker and Maddox might have seen or heard from their position just outside the screen door. Finally, the Detectives were able to view the screen door that was between the Officers and Thompkins, giving them further insight into what the Officers' perspective would have been.

After Detectives Smith and Evans completed their review of the ongoing investigation at the scene, they proceeded to Pittsburgh Police headquarters where they expected to get firsthand accounts of what happened immediately before and during the shooting on Finley Street. The protocol at the time called for the Pittsburgh Police to conduct the interviews of any of its officers who were involved in, or witnesses to, the critical incident. District Attorney Detectives were supposed to sit in and observe these interviews as they took place. Detectives Smith and Evans, both former members of the Pittsburgh Police Homicide Division, were very familiar with this procedure.

Upon arrival at police headquarters, the District Attorney Detectives made contact with several different individuals from the City Command Staff and Homicide Unit who were providing them with the reports and recordings that were available at this early stage. The Detectives were also able to watch Officer Flicker's body camera recording along with various members of the Command Staff and Homicide Division. However, the District Attorney Detectives were not able to perform two basic oversight functions that night. First, they were not permitted to view Officers Flicker and Maddox or to ask those Officers whether they were willing to give a statement. Detectives anticipated that both Officers would invoke their constitutional rights, as any citizen might, and not give a statement for the purposes of a criminal investigation. However, it was established protocol for the District Attorney Detectives overseeing the criminal investigation to make physical observations of the Officers to determine

if there was any evidence of impairment, lack of impairment or any other condition of the Officers that could be relevant to determine justification for the use of force. Further, the Officers would have had the option to waive their constitutional rights and provide a statement if they chose to do so. A second issue the Detectives from the District Attorney's office confronted that night was that they were not able to observe the interviews of the Officers Macioce and Haule, who were witnesses to the critical incident. Detectives Smith and Evans left headquarters that night wholly unaware whether any witness officers were interviewed by homicide detectives.

These unexpected hindrances caused concern for these seasoned Detectives, as well as for this Grand Jury, in the investigation of Thompkins' death. The opportunity to lay eyes on officers who are involved in critical incidents is valuable only when it happens close in time to the incident. Once too much time has passed, evidence that may have been observable is forever lost. Secondly, law enforcement officers who are not under criminal investigation and who are witnesses to incidents as serious as this one must be made available for questioning to independent investigators. Delays or denials of such interviews are improper, have the potential to taint a criminal investigation, and run counter to a law enforcement officer's duty to bring the truth to light, even in the most difficult of circumstances.

Despite these setbacks, Detective Smith, who had taken the lead on the investigation for the District Attorney's Office, continued to pursue his assignment. In the days following the critical incident at 129 Finley Street, Detective Smith was provided with police reports detailing the interviews of Officers Macioce and Haule. He was also given police reports that stated Officers Flicker and Maddox had each asserted his Fifth Amendment right against self-incrimination and declined to be interviewed days after the incident. There was no report

indicating either that anyone attempted to interview the shooting Officers, or that either of those Officers invoked any privilege on the night of the critical incident. Finally, Detective Smith continued to receive and analyze relevant material from the City of Pittsburgh Police Department, Allegheny County Medical Examiner's Office, Allegheny County 911 Dispatch Services, Guardian Protection Services and every other source that could enhance the investigation. After an exhaustive examination of all substantive evidence, Detective Smith testified before this Grand Jury that, based on his training and experience, the facts and circumstances known to him supported the actions taken by Officers Flicker and Maddox during the critical incident. That assessment, however, came with the caveat that the obstructions at police headquarters prevented him from having a complete understanding of what happened in the moments leading up to and during the shooting. Furthermore, these obstructions prevented Detective Smith from ensuring that proper procedures were followed and that an unbiased investigation was conducted into the shooting.

PITTSBURGH POLICE TRAINING AND THE USE OF DEADLY FORCE

To properly assess the actions of Officer Flicker or Officer Maddox, the Grand Jury needed to know how they were trained in the use of deadly force. Reckless, negligent, or intentional breach of such training conceivably could lead to criminal liability. To accomplish this task, this Grand Jury subpoenaed the lead use of force instructor for the City of Pittsburgh Police Department, Master Police Officer David Wright. For the past seventeen years, Officer Wright has been a lead instructor and has overseen the use of force curriculum that has been in place for City of Pittsburgh Police cadets. All new officers in the City of Pittsburgh Police Department must go through use of force training while they are in the police academy, and they

are required to be retrained regularly on any legal or policy updates in that area. Officers Flicker and Maddox would have been subject to this mandatory training. They are expected to apply the same principles taught to all City police officers when it comes to the use of deadly force.⁴

Training in the use of deadly force is among the most important aspects of training that any law enforcement officer will go through. As such, there are national, state, and local standards on the use of deadly force that have been developed over the past several decades. Courts at the federal and state level have examined instances where an officer's use of force was in question. *Graham v. Connor* and *Tennessee v. Garner*, both decided by the United States Supreme Court, have laid much of the framework for assessing the propriety of a police officer's use of force. In those landmark opinions, and in the line of cases that have flowed from them, our courts have set limits on the use of force in accordance with the Fourth Amendment to the United States Constitution, which protects individuals from unlawful searches and seizures. The principles set forth in *Graham* and *Garner* have been adopted by the Commonwealth of Pennsylvania through case law and statute. Master Officer Wright testified that the Pittsburgh Bureau of Police has written its policies and designed its training in accordance with those same guidelines. Thus, the cadets attending the City of Pittsburgh Police Academy are being trained in accordance with the standards promulgated by the United States Supreme Court.

In *Graham v. Connor*, the Supreme Court instructed that the actions of an officer are to be considered in light of the facts and circumstances known to the police officer at the time the force is applied. Then, the question to be asked is whether a reasonable officer faced with similar facts and circumstances would have used a similar level of force. This test, commonly

⁴ Officer Wright, though a recognized expert in the use of force, was not asked by this Grand Jury to opine on the appropriateness of the deadly force used during the Finley Street incident. Moreover, he was given no information about the specific matter under inquiry by this Grand Jury. The areas of inquiry were limited to use of force training within the City of Pittsburgh Police Department and the application of that training to various hypothetical scenarios that might be presented to law enforcement officers.

referred to as the standard of “objective reasonableness,” satisfies the constitutional protections of the Fourth Amendment against unlawful seizures. If a reasonable officer would have used a similar level of force, then the use of force will be deemed justified. If a reasonable officer would have used less force, then the use of force under inquiry should be deemed excessive.

In *Tennessee v. Garner*, decided several years before *Graham*, at issue was whether deadly force was justifiable when used against a person fleeing from the police. The Court ruled that an officer could not use deadly force in those circumstances unless it was necessary to prevent the escape and the suspect posed a risk of serious physical harm or death to others if not arrested without delay. Though *Garner* was specifically addressing the use of deadly force during a suspect’s flight from apprehension, that decision helped frame the national standard for the justification of deadly force in general.

The analysis applied by the Supreme Court in *Garner* is mirrored by the applicable law in Pennsylvania, specifically in Chapter 5 of Title 18 of the Criminal Code. As codified in the Commonwealth of Pennsylvania, the use of deadly force by a police officer is justified only in the following two circumstances:

1. When the police officer believes that such force is necessary to prevent death or serious bodily injury to himself or another person, or;
2. When it is necessary to prevent escape from arrest and the person to be arrested has committed or attempted to commit a forcible felony or is attempting to escape and possesses a deadly weapon, or otherwise indicates that he will endanger human life or inflict serious bodily injury unless arrested without delay. A forcible felony includes murder, aggravated assault, rape, and kidnapping.

Training in the application of this law and policy to real-world situations is provided to all officers by the City's use of force instructors. While at the City of Pittsburgh Police Academy, cadets learn to recognize when the need for deadly force may be necessary once they are on duty. This training includes academic instruction as well as live simulation drills where officers' reactions are tested under varying realistic scenarios. According to Officer Wright, it is imperative that law enforcement officers are trained to respond without hesitation and with an appropriate amount of force to meet any given threat. While excessive force is often the issue under examination, a response of too little force can be just as life-threatening should a police officer fail to eliminate the threat of harm to the officer or others. To make these split-second calculations in life-threatening situations, police officers are trained to recognize the elements of deadly force, which are ability, opportunity, imminent fear, and preclusion.

The first element, ability, refers to an actor's ability to cause death or serious bodily injury to the police officer or someone else. Possession of a readily accessible deadly weapon, such as a firearm, is the quintessential example of such ability. Next, if the person at issue has the ability to cause such harm, a police officer must determine whether that person has the opportunity to do so. Opportunity is best explained by comparing two scenarios where an individual is some distance away from the officer or any other bystander. In the first scenario, a person possesses a baseball bat. In the second, that person possesses a firearm. In both instances, that individual has the ability to inflict serious bodily harm or death upon another. However, the opportunity to do so is different because of the potential range of each weapon. The person with the baseball bat could not strike unless he closed the gap between himself and others he means to harm. With a firearm, the opportunity to strike is much greater, as the weapon is effective even at long range. Third, the police officer must have imminent fear that

this person who has the ability and opportunity to harm someone is going to act. The primary factor is whether the person is taking a step to create that fear. For example, the person with baseball bat might raise it above his head or clench his hands tightly as if getting ready to swing. The person with the firearm may act by raising it upwards in preparation to fire. Even body language can create imminent fear in a reasonable police officer. Finally, members of the Pittsburgh Police force are trained in "preclusion," that is, to consider other options before using deadly force. The important point, however, is that such an alternative option must be a reasonable one that will still eliminate the threat of harm. Here again, it is important to recognize that using less force than necessary could have catastrophic consequences.

In addition to the above, police officers are trained to respond immediately to active shooters. They cannot wait for backup to arrive or develop a plan of action when confronted with a situation when there is an ongoing, active shooting. Moreover, in those circumstances, the officers are trained to respond to active shooters with deadly force, and they are not expected to delay their response to determine the roles of all individuals involved. Instead, they are trained in the priority of life continuum, first trying to protect victims or innocent bystanders, then other first responders and police and, finally, those suspected of criminal activity. In making an identification of who is an innocent person and who is suspected of criminal activity, the officers must rely on the limited information available to them and their first-hand observations. Once an officer makes that determination, he is trained to shoot until the threat is eliminated. That is not to say that an active shooter must be killed, but it is appropriate to use deadly force on such a person until that person no longer poses a threat to others. That assessment may be different depending on an officer's perspective, but so long as the response is objectively reasonable, it should not be deemed an excessive use of force or a criminal violation.

ANALYSIS

On January 22, 2017, Officers Brendan Flicker and Harrison Maddox were confronted with the perfect storm of tragic circumstances. Just before 4:00 in the morning they were among the first police officers to respond to a call for a home invasion with weapons involved. They knew there was an elderly, disabled woman inside and a male intruder. Other than that, they had little knowledge of what they might encounter upon arrival. When they took position on the front porch, the Officers immediately faced a chaotic, developing situation. They announced their presence. Inside the front door, they could hear Carrie Montague pleading for them to enter. Unfortunately, they were locked out. The Officers could see, through the screened security door, an armed man at the top of the stairwell directly inside. They quickly realized that this unknown man was pointing his firearm at an unarmed person at the bottom of the stairs, near the front door. Christopher Mark Thompkins then fired a shot down the stairs toward Juan Jeter-Clark. Montague can be heard on the 911 recording saying, "[t]he man shot my son."

Officers Flicker and Maddox now had an active shooter to confront. The yet-unidentified man had clearly exhibited the ability and opportunity to cause serious bodily harm or death, and he had already taken a step that would cause any reasonable officer to believe that he was willing to do so. At the moment Thompkins fired his weapon, if not before, the Officers were trained that they could respond with deadly force. However, they first sought to preclude the need for such action. Officer Flicker left his position of cover and directly faced the threat. He gave loud verbal commands to Thompkins demanding that he drop the weapon. Tragically, Thompkins did not hear this command or, if he did, it did not register with him. Thompkins then fired a second

shot at Jeter-Clark. Officer Flicker would later describe to other responding officers that he thought he was watching an execution. His training demanded that he protect the unarmed man at the bottom of the stairs and any others who may be inside from an active shooter. His training did not require that he identify the possible roles of all persons involved, nor did the rapidly evolving situation afford the Officers the opportunity to investigate further. Officer Flicker responded to Thompsons' shot with two shots of his own. Upon seeing another officer in an open line of fire and engaged with an active shooter, Officer Maddox left his position of cover and fired nine times at Thompsons. Struck multiple times with bullets, Thompsons fell down on the landing with Richmond's .38 caliber revolver by his side. Even at this point, the Officers kept their weapons trained on Thompsons, as they were unsure whether the threat had been eliminated. The Officers continued to hold that position until backup arrived and forced entry was made. Throughout, Jeter-Clark continued to babble incoherently as though he had some right to be in the home. After making forced entry, it would be several minutes before Officers Flicker and Maddox would be informed that they had shot and killed a person they had come to protect.

Presented with these facts and taking into account what was known to the Officers at the time they fired their weapons, this Grand Jury cannot recommend criminal charges in light of the Officers' training and the state of our current laws. The Officers clearly observed a firearm in Thompsons hand. Thompsons fired multiple shots toward Jeter-Clark, who was unarmed, and toward the Officers themselves. At this moment both the Officers and Jeter-Clark were in danger of death or serious bodily injury. Thompsons second shot came after police commands to drop the gun. The Officers then returned fire. An objectively reasonable police officer faced with the same circumstances and with the same limited information available would have acted

similarly, not only to defend themselves, but also to defend the unarmed man at whom shots were being fired.

CONCLUSION

The 2017 Allegheny County Investigating Grand Jury is satisfied that the actions taken by Officers Brendan Flicker and Harrison Maddox that led to the death of Christopher Mark Thompkins were actions based upon the training that they received as Pittsburgh Police officers. We find that an objectively reasonable officer faced with the same circumstances and with the same limited information that was available during the encounter would have taken similar actions. We do not recommend criminal charges in this matter.

GRAND JURY RECOMMENDATION

Based on the evidence available, we do not recommend criminal charges against the Officers at this time.